

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK and AMANDA ST. PIERRE,

Defendants.

CLERK 
BY _____
DEPUTY CLERK

Civil Action No.

1.08-CV-177

COMPLAINT

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under sections 309(b), 309(d), and 404 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(b), 1319(d), and 1344 to obtain injunctive relief and civil penalties against Mark St. Pierre and Amanda St. Pierre, individually, for the discharge of pollutants into waters of the United States without authorization, in or about the Towns of Richford and Berkshire, in Franklin County, Vermont, in violation of CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344.

2. In this action, the United States seeks (1) to enjoin the discharge of pollutants into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C.

§ 1311(a); (2) to require Defendants, pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), at their own expense and at the direction of the EPA, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in CWA sections 309(d), 33 U.S.C. § 1319(d).

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to CWA sections 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the District of Vermont pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1391(c), because the Defendants reside, are found and conduct business in this District, the subject property is located in this District, and the violations alleged herein occurred in this District.

5. Notice of the commencement of this action has been given to the State of Vermont pursuant to CWA sections 309(b), 33 U.S.C. § 1319(b).

THE PARTIES

6. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and

519, and in accordance with CWA sections 309(b), 309(d) and 506, 33 U.S.C. §§ 1319(b), 1319(d), and 1366.

7. Defendant Mark St. Pierre is a private individual residing at 1546 Richford Road, Richford, Vermont. The United States brings this action against Mark St. Pierre in his individual capacity.

8. Defendant Amanda St. Pierre is a private individual residing at 1546 Richford Road, Richford, Vermont. The United States brings this action against Amanda St. Pierre in her individual capacity.

9. At all times relevant to the Complaint, one or more of the Defendants either owned, leased or otherwise controlled the real property that is the subject of this Complaint and/or otherwise controlled the activities that occurred on such property.

STATUTORY AND REGULATORY AUTHORITY

10. CWA sections 301(a) and 404(a), 33 U.S.C. §§ 1311(a), 1344(a), prohibit the discharge of pollutants, including dredged and fill material, into navigable waters except in compliance with, inter alia, a permit issued by the Army Corps of Engineers pursuant to CWA section 404, 33 U.S.C. § 1344.

11. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into

navigable waters at specified disposal sites, after notice and opportunity for public comment.

12. CWA section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include, inter alia, "any addition of any pollutant to navigable waters from any point source."

13. CWA section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, inter alia, dredged spoil, rock, sand and cellar dirt.

14. CWA section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

15. 33 C.F.R. § 328.3(a) and 40 C.F.R. §§ 122.2 and 232.2, define "waters of the United States" to include, inter alia: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all interstate waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

16. 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 232.2 define "wetlands" as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

17. CWA section 502(14), 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

18. CWA section 502(5), 33 U.S.C. § 1362(5), defines "person" to include, inter alia, "an individual [or] corporation."

19. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

20. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

GENERAL ALLEGATIONS

21. The Defendants are "persons" within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

22. At various times between 1998 and 2002, one or more of the Defendants and/or persons acting on their behalf, discharged dredged or fill material into waters of the United States at various sites in Franklin County, Vermont, without a permit under CWA section 404. Violations at each site (collectively, the "Sites") are identified as a separate Count below.

23. The dredged or fill material that one or more of the Defendants and/or persons acting on their behalf, caused to be

discharged includes, among other things, dirt, spoil, rock and sand, all of which constitute "pollutants" as defined in CWA section 502(6), 33 U.S.C. § 1362(6).

24. One or more of the Defendants and/or persons acting on their behalf used mechanized land-clearing and earth-moving equipment to accomplish the discharges. This equipment constitutes "point sources" as defined in CWA section 502(14), 33 U.S.C. § 1362(14).

25. Defendants did not obtain a permit from the Secretary of the Army, acting through the Chief of Engineers, for the discharges of dredged or fill material into waters of the United States as required by CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344.

26. One or more of the Defendants either owned, leased or otherwise controlled the land on which each unauthorized discharge of dredged or fill material into waters of the United States occurred.

27. One or more of the Defendants conducted, contracted for, supervised and/or otherwise controlled the unauthorized activities described in Paragraph 22.

28. Defendants have violated and continue to violate CWA section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged or fill material into waters of the United States, including wetlands, at all Sites identified below.

29. Each day that such material remains in place constitutes a separate violation of CWA section 301(a), 33 U.S.C. § 1311(a).

30. Unless enjoined, Defendants are likely to continue to discharge dredged or fill material into and/or to allow dredged or fill material to remain in waters of the United States at the Sites identified below in violation of CWA section 301, 33 U.S.C. § 1311.

COUNT I: Tract 1043

31. Plaintiff repeats and realleges the allegations set forth in Paragraphs 21 through 30.

32. Tract 1043 is located off Golf Course Road in the Town of Richford, Vermont. The activities alleged in this Complaint with regard to Tract 1043 occurred in Fields UN-3 and UN-4.

33. At various times during 1999, one or more of the Defendants and/or those acting on their behalf discharged dredged or fill material into wetlands in Fields UN-3 and UN-4 within Tract 1043, all of which were either adjacent and hydrologically connected to the Missisquoi River (wetlands in Field UN-4) or were adjacent and hydrologically connected to an unnamed tributary of the Missisquoi River (wetlands in Field UN-3). The Missisquoi River flows to Lake Champlain.

34. The wetlands in Fields UN-3 and UN-4 within Tract 1043 are "wetlands" within the meaning of the CWA and regulations

promulgated thereunder. Lake Champlain, the Missisquoi River, the unnamed tributary of the Missisquoi River, and the wetlands within Tract 1043 are each a "water of the United States" within the meaning of the CWA and the regulations promulgated thereunder.

35. Defendants' activities within Tract 1043 resulted in the filling of approximately 3.9 acres of waters of the United States.

COUNT II: Tract 9970

36. Plaintiff repeats and realleges the allegations set forth in Paragraphs 21 through 35.

37. Tract 9970 is divided by Berkshire Center Road in the Town of Berkshire, Vermont. The activities alleged in this Complaint with regard to Tract 9970 occurred in Fields UN-2 and UN-4.

38. At various times during 1999, one or more of the Defendants and/or those acting on their behalf discharged dredged or fill material into wetlands in Fields UN-2 and UN-4 within Tract 9970, all of which were adjacent and hydrologically connected to the Pike River. The Pike River flows into Lake Champlain.

39. The wetlands in Fields UN-2 and UN-4 within Tract 9970 are "wetlands" within the meaning of the CWA and regulations promulgated thereunder. The Pike River and the wetlands within

Tract 9970 are each a "water of the United States" within the meaning of the CWA and the regulations promulgated thereunder.

40. Defendants' activities within Tract 9970 resulted in the filling of approximately 7.2 acres of waters of the United States.

COUNT III: Tract 9424

41. Plaintiff repeats and realleges the allegations set forth in Paragraphs 21 through 40.

42. Tract 9424 is divided by Richford Road in the Town of Berkshire, Vermont. The activities alleged in this Complaint with regard to Tract 9424 occurred in Fields UN-1, UN-2, UN-6, UN-10, UN-11 and UN-18.

43. At various times during 1998, 1999 and 2000, one or more of the Defendants and/or those acting on their behalf discharged dredged or fill material into Godin Brook and into wetlands in Fields UN-1, UN-2, UN-6, UN-10, UN-11 and UN-18 within Tract 9424, all of which were either adjacent and hydrologically connected to Godin Brook (wetlands in Fields UN-1, UN-2 and UN-11), or were adjacent and hydrologically connected to an unnamed tributary of Godin Brook (wetlands in Fields UN-6, UN-10 and UN-18). Godin Brook is a tributary to the Missisquoi River.

44. The wetlands in Fields UN-1, UN-2, UN-6, UN-10, UN-11 and UN-18 within Tract 9424 are "wetlands" within the meaning of

the CWA and regulations promulgated thereunder. Godin Brook, the unnamed tributary of Godin Brook, and the wetlands within Tract 9424 are each a "water of the United States" within the meaning of the CWA and the regulations promulgated thereunder.

45. Defendants' activities within Tract 9424 resulted in the filling of approximately 28.6 acres of waters of the United States.

COUNT IV: Tract 10264

46. Plaintiff repeats and realleges the allegations set forth in Paragraphs 21 through 45.

47. Tract 10264 lies along the Pike River in the Town of Berkshire, Vermont. The activities alleged in this Complaint with regard to Tract 10264 occurred in Field UN-8.

48. At various times during 2001 and 2002, one or more of the Defendants and/or those acting on their behalf discharged dredged or fill material into wetlands in Field UN-8 within Tract 10264, all of which were adjacent and hydrologically connected to a brook which is an unnamed tributary to the Pike River.

49. The wetlands in Field UN-8 are "wetlands" within the meaning of the CWA and regulations promulgated thereunder. The wetlands within Tract 10264 and the unnamed tributary to the Pike River are each a "water of the United States" within the meaning of the CWA and regulations promulgated thereunder.

50. Defendants' activities within Tract 10264 resulted in the filling of approximately 1.4 acres of waters of the United States.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

1. That the Defendants be permanently enjoined from discharging or causing the discharge of dredged or fill material or other pollutants into any waters of the United States except in compliance with the CWA;

2. That the Defendants be enjoined to undertake measures, at Defendants' own expense and at the direction of the EPA, to effect complete restoration of the Sites, and/or to conduct off-site mitigation for irreversible environmental damage, as appropriate;

3. That the Defendants be assessed pursuant to CWA sections 309(d), 33 U.S.C. § 1319(d), a civil penalty for each day of each violation of CWA section 301(a), 33 U.S.C. § 1311(a).


4. That the United States be awarded costs and disbursements in this action; and

5. That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Respectfully submitted,

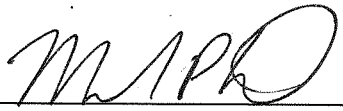
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